



**U.S. Department of Justice**

**Environment and Natural Resources Division**

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February 10, 2017

**VIA E-MAIL AND U.S. MAIL FIRST-CLASS**

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Re: United States and West Virginia Department of Environmental Protection v.  
James C. Justice Companies, Inc., and James C. Justice, II,  
Civil Action No. 1:15-cv-16018 (S.D. W. Va.)

Gentlemen:

The United States Environmental Protection Agency, Region III ("EPA") continues to evaluate the compliance of the James C. Justice Companies, Inc., and James C. Justice, II (collectively the "Justice Defendants") with the Consent Decree entered in the above-referenced matter on February 25, 2016.

Paragraphs 23-26 of the Consent Decree set forth the Justice Defendants' obligations regarding restoration and mitigation. Pursuant to Paragraph 24, on April 28, 2016, Neely & Callaghan submitted on behalf of the Justice Defendants a document titled "Dam Structure Characterization and Removal Dams 11 Through 20, Turkey Creek (Middle New River Watershed), Monroe County, West Virginia" ("Partial Dam Removal Plan") authored by Potesta & Associates, Inc. ("Potesta"). EPA, in consultation with the West Virginia Department of Environmental Protection ("WVDEP"), reviewed the Partial Dam Removal Plan. On October 11, 2016, EPA sent a letter to Ms. Jessica Yeager of Potesta and to Mr. Michael Callaghan providing comments on the Partial Dam Removal Plan and stating that EPA could not approve the Plan because it was incomplete (both because it did not address all twenty dams and because it lacked certain

necessary information with regard to certain aspects of restoration, mitigation and post-construction monitoring). In addition to its comments, EPA acknowledged that the Turkey Creek area had experienced significant flooding in June 2016 that may have altered conditions, and requested the Justice Defendants' views on that issue. EPA's letter noted that Paragraph 25 of the Consent Decree required a response to EPA's comments within 60 days.

To date, EPA has not received any response to its comments on the Partial Dam Removal Plan. EPA has contacted Potesta to determine the status of a response, and based upon those communications it is EPA's understanding that no response has been prepared.

We also have no record of having received confirmation from the Justice Defendants that they recorded deed restrictions for the sites, as required by Paragraph 29 of the Consent Decree.

Based on available information, the Justice Defendants appear to be in violation of the restoration and mitigation requirements set forth in Paragraphs 23-26 of the Consent Decree, and the deed restriction-related requirements of Paragraph 29 of the Consent Decree. Among other potential remedies, such noncompliance subjects the Justice Defendants to stipulated penalties under the Consent Decree (see Paragraphs 46-48). I attempted to contact Mr. Callaghan about these issues early last month, but missed his return call. I again attempted to reach Mr. Callaghan on February 2, 2017, but as of the date of this letter have not spoken with him about these issues. The United States requests that the Justice Defendants provide in writing by February 21, 2017, the status of their preparation of a response to EPA's October 11, 2016 comments. The Justice Defendants must provide a substantive response to EPA's comments as soon as possible, but not later than March 20, 2017. If we do not receive the requested written response regarding status by February 21, 2017, or if do not receive a substantive response to EPA's comments by March 20, 2017, the United States intends to seek appropriate relief from the Court.

In addition, in light of the above-noted flooding, the United States believes that a site visit may be necessary to allow EPA to consider current conditions prior to approval of a final plan. Accordingly, pursuant to Paragraph 36 of the Consent Decree, please consider this letter to be notice that representatives of EPA intend to visit the Site on or about February 28, 2017 (weather permitting).

If your client has technical questions regarding the information contained in EPA's October 11, 2016 letter, please have them contact Todd Lutte, Wetlands Enforcement Coordinator, at (215) 814-2099. If you have legal questions or would like to arrange a time to discuss this matter further, please indicate such in your written response, or feel free to contact me by telephone at (202) 514-1880.

Sincerely,

/s/ Austin D. Saylor

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